(C. C. 1892) 53 Fed. 513. Since there can be no question that here the defendants' rights were directly affected, the instant case must be said to overrule *Mangels* v. *Donau Brewing Co., supra,* and to extend the decision in *Stewart* v. *Dunham, supra,* to all cases of intervention. This seems a rather unjust rule since such parties could not have instituted the suit originally. The other rule seems preferable, the objection of multiplicity of actions being met by the argument that the only difference would be the bringing of two suits instead of one, one by all the non-residents in a federal court, the other by the residents in the state court.

DOMICIL—HUSBAND AND WIFE—FICTION OF UNITY.—In 1873, the decedent, whose life was spent in Scotland, married a domiciled Scotchman. In 1893, because of his constant drunkenness, her mother paid his way to Australia. In 1902 he purported to marry there a woman with whom he lived until his death in 1918. The decedent died in 1915 pending divorce proceedings in Scotland. *Held,* her estate was subject to legacy duty according to the law of Australia. Her husband had become domiciled there. The domicil of the wife follows that of the husband under the doctrine of marital unity. *Lord Advocate* v. *Jaffrey and Another* (H. L. 1920) 124 L. T. R. 129.

With this latest expression of the House of Lords on the subject of a wife's domicil should be compared the judicial trend in this country. To obtain a divorce, a wife can acquire a separate domicil. *Cheever* v. *Wilson* (1869) 9 Wall. 108; *Perkins* v. *Perkins* (1916) 225 Mass. 82, 113 N. E. 841. And when blameless, she is not domiciled with her husband so as to permit of service by publication when he sues for divorce in another jurisdiction. *O'Dea* v. *O'Dea* (1885) 101 N. Y. 23; *Perkins* v. *Perkins, supra.* On these points the English law is not clear. See *Williamson* v. *Osenton* (1914) 232 U. S. 619, 625, 34 Sup. Ct. 442; Dicey, *Conflict of Laws* (2nd ed. 1908) 132. For suing others in a federal court, a wife, justifiably living apart, may gain a domicil of her own. *Williamson* v. *Osenton, supra.* Also, for certain other purposes. *Matter of Florance* (1889) 54 Hun 328, 7 N. Y. Supp. 578, *aff'd.* 119 N. Y. 661, 23 N. E. 1151 (probate of will); *Shute* v. *Sargent* (1892) 67 N. H. 305, 36 Atl. 282 (settlement of estate); *Matter of Crosby* (1914) 85 Misc. 679, 148 N. Y. Supp. 1045 (appraisal under Transfer Tax Law). But probably a wife unjustifiably living away from her husband may not benefit by a separate domicil. *Hammond* v. *Hammond* (1905) 103 App. Div. 437, 93 N. Y. Supp. 1; *Loker* v. *Gera'd* (1892) 157 Mass. 42, 31 N. E. 709. Nor even, it seems, may she then claim for her benefit his domicil. *Prater* v. *Prater* (1888) 87 Tenn. 78, 9 S. W. 361; *cf. In re Coreil's Estate* (1919) 145 La. 788, 83 So. 13. And when husband and wife live mostly apart, but without estrangement, there is but one domicil,—the husband's. *Howland* v. *Granger* (1900) 22 R. I. 1, 45 Atl. 740; *Anderson* v. *Watt* (1891) 138 U. S. 694, 11 Sup. Ct. 449. In the instant case, the court found the path to progress already paved with dicta. See *Dolphin* v. *Robins* (1859) 7 H. L. C. *389, *418; *Le Sueur* v. *Le Sueur* (1876) L. R. 1 P. D. 139, 141. These are definitively rejected, and the marital unity theory exalted. In the light of modern conditions, this conceptualistic fetichism seems singularly out of place. See *Shute* v. *Sargent, supra,* 305 *et seq.*

EASEMENTS—IMPLIED IN FAVOR OF GRANTEE—EFFECT OF SALE OF SERVIENT TENEMENT.—The plaintiff and his brother, M, had been devised their father's farm as tenants in common, subject to a life estate in their mother in the dwelling-house and lot. A spring on the farm supplied the house with water through an underground pipe. The brothers partitioned by an exchange of quit-claim deeds. Upon their mother's death the plaintiff bought M's moiety in the house and lot, taking a quit-claim deed. Subsequently M conveyed his separate portion to

the defendant by warranty deed. None of these deeds had referred to the right to take water, nor did the defendant have knowledge in fact of the pipe. Some years later she cut the pipe. In an action for damages, *held,* for the defendant. *Steinbeck* v. *Helena* (App. Div. 2nd Dept. 1921) 185 N. Y. Supp. 788.

No easement will be implied in favor of a grantor except where the burden claimed is apparent and strictly necessary. *Wells* v. *Garbutt* (1892) 132 N. Y. 430, 30 N. E. 978; *Butterworth* v. *Crawford* (1871) 46 N. Y. 349; *Grotenstein* v. *Kaplan* (1915) 90 Misc. 403, 153 N. Y. Supp. 614. In the instant case, however, this question does not arise. When the life estate was severed from the farm by the devise to the widow, an easement by implication arose in its favor. *Paine* v. *Chandler* (1892) 134 N. Y. 385, 32 N. E. 18; *Brakeley* v. *Sharp* (1854) 10 N. J. Eq. 206. The existence of the water-pipe must have been known, and its use contemplated by the devisor, its constructor. Implied easements rest upon the implied intent gathered from the circumstances surrounding the conveyance. See *Wells* v. *Garbutt, supra,* 437. Upon the death of the widow the house and lot passed to the sons as tenants in common, one of whom, M, was also the owner of the servient tenement. Although M could not have an easement against himself, it does not seem that the plaintiff's right would be thereby impaired. And so the question is squarely presented whether a sale of the servient tenement may cut off an easement. If the easement be apparent and continuous, this question must be answered in the negative. *Havens* v. *Klein* (N. Y. 1875) 51 How. Pr. 82. An easement is apparent when it may be discovered upon reasonable inspection. See *Lampman* v. *Milks* (1860) 21 N. Y. 505, 516. In the instant case it is not clear whether or not the water-pipe would fall within this rule. This being so, the conclusion of the court may perhaps be justified on the ground that it is good policy to discourage the implication of easement to the surprise of purchasers without notice, and to demand the recordation of servitudes. *Cf. Taylor* v. *Millard* (1890) 118 N. Y. 244, 23 N. E. 376; Tiffany, *Real Property* (2nd ed. 1920) §380.

ESTOPPEL—MORTGAGES—DEFICIENCY JUDGMENT.—The plaintiff held a $60,000 mortgage on the defendant's land in Connecticut, where the practice is strict foreclosure. The defendant signed a stipulation agreeing to a foreclosure by sale in reliance upon the plaintiff's representation that she would not hold him for a deficiency. The land, valued by official appraisers at $111,600, was sold to the plaintiff for $55,000 and a deficiency decree entered. In an action in New York on that decree, *held,* the plaintiff was estopped to enforce it. *Witherell* v. *Kelly* (App. Div. 2nd Dept. 1921) 187 N. Y. Supp. 43.

The doctrine of estoppel by misrepresentation requires that there be a misrepresentation of a present or past fact, as opposed to a promise *de futuro. Jorden* v. *Money* (1854) 5 H. L. C. 185; *White* v. *Ashton* (1873) 51 N. Y. 280; see *Maddison* v. *Alderson* (1883) L. R. 8 A. C. 467, 473 . A misrepresentation of intention clearly works an estoppel. *Cf. Edgington* v. *Fitzmaurice* (1885) L. R. 29 Ch. Div. 459. Some courts have recognized what purports to be an exception to the general rule, namely, where one represents that he abandons an existing right. *Faxton* v. *Faxon* (1873) 28 Mich. 159; *White* v. *Walker* (1863) 31 Ill. 422; *contra, Jorden* v. *Money, supra.* The court in the principal case follows the so-called exception. But, stripped of the court's reasoning, the decision does nothing more than decide that a change of position in reliance upon a promise where the acts done were to be anticipated by the promisor will support a promise in equity. The principal case, in reality, is an extension of the doctrine implicit in the cases which hold that a gift of land will be enforced specifically where the donee has made expensive improvements to the knowledge of the promisor. *Freeman* v. *Freeman* (1870) 43 N. Y. 34; *Messiah Home for Children* v. *Rogers* (1914) 212 N. Y. 315, 106 N. E. 59. The